

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**Complaint on First-Class Mail
Service Standards**

Docket No. C2001-3

**DOUGLAS F. CARLSON
MOTION FOR RECONSIDERATION OF POR C2001-3/4
OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE A LATE INTERROGATORY
OR, IN THE ALTERNATIVE, TO ADMIT A DOCUMENT INTO EVIDENCE**

November 20, 2001

On October 25, 2001, my interrogatory DFC/USPS-GAN-31 was filed.¹

This interrogatory consisted of two parts:

- a. Are commercial passenger airlines currently transporting First-Class flats? If not, please describe the transportation arrangements for First-Class flats that, after September 11, 2001, are not being transported on commercial passenger airlines.
- b. Are commercial passenger airlines currently transporting First-Class SPR's? If not, please describe the transportation arrangements for First-Class SPR's that, after September 11, 2001, are not being transported on commercial passenger airlines.

On November 1, 2001, the Postal Service filed an objection to this interrogatory.² The Postal Service asserted that this interrogatory was irrelevant. Objection at 1. On November 2, 2001, I filed a motion to compel a response to

¹ Douglas F. Carlson Interrogatories to United States Postal Service Declarant Charles M. Gannon (DFC/USPS-3-31), filed October 25, 2001.

² Objection of the United States Postal Service to Interrogatory of Douglas Carlson, filed November 1, 2001 ("Objection").

this interrogatory.³ The Postal Service filed an opposition to my motion on November 9, 2001.⁴ In the Postal Service's opposition, the Postal Service painted my interrogatory as an inquiry into "temporary," "emergency," or "temporary emergency" changes in air transportation due to aviation security. Opposition at 1, 2. In ruling against my motion, the presiding officer also appeared to accept the Postal Service's interpretation that my interrogatory was inquiring into temporary changes in air transportation. POR C2001-3/4 at 3. Therefore, the presiding officer ruled, my interrogatory was irrelevant. *Id.*

My interrogatory was, in fact, concerned with *permanent* changes in the availability of commercial airlines for transporting First-Class Mail. I wrote the interrogatory in the present tense because, as an outsider to issues of aviation security, I was under the impression that new airline security restrictions implemented after September 11, 2001, were permanent.⁵ While a person might reasonably interpret my interrogatory as inquiring into temporary changes, the present-tense language of this interrogatory also would cover permanent changes. Thus, if First-Class flats or SPR's are not "currently" being transported on commercial passenger airlines, this change in procedure could be the result of permanent changes just as easily as it could be the result of temporary changes. A fair reading of this interrogatory confirms that it applies to permanent as well as temporary changes. The Postal Service's characterization of this interrogatory as applying only to temporary changes was incorrect.

³ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-GAN-31, filed November 2, 2001.

⁴ Opposition of the United States Postal Service to Douglas Carlson Motion to Compel a Response to DFC/USPS-GAN-31 ("Opposition"), filed November 9, 2001.

⁵ Except for the resumption of curbside check-in of luggage, nearly all aviation-security procedures implemented since September 11, 2001, have had a permanent appearance; in fact, now that Congress has passed an aviation-security bill, security will be increasing, not decreasing. Therefore, in writing my interrogatory, I was reasonable in expecting that current restrictions would be permanent.

Possible permanent changes to the air-transportation landscape for First-Class Mail are relevant to issues in this proceeding. Paragraph 66 of my complaint alleges that “[t]he changes in First-Class Mail service standards that the Postal Service implemented in 2000 and 2001, as well as the current definition of the two-day delivery area for First-Class Mail, violate 39 U.S.C. §§ 101(e) and (f).”⁶ The word “violate” is in the present tense, thus indicating that I am complaining that the new service standards are causing an *ongoing* violation of these two policies of the Postal Reorganization Act on every day in which they are in effect. I also refer to the “current” definition of the two-day delivery area. Nowhere have I suggested that my complaint is restricted to violations of these policies that existed on the date on which I filed my complaint, June 19, 2001, and that my complaint is not concerned with ongoing violations of the Act.

Possible changes in the availability of commercial passenger airlines to transport First-Class Mail of different sizes and shapes might change the nature of the violation of section 101(e) or 101(f). Section 101(e) states:

In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.

Section 101(f) states, in relevant part:

In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services to the Postal Service.

A permanent change in the availability of commercial passenger airlines to transport some or all sizes or shapes of First-Class Mail would be relevant to determining whether the surface transportation currently in use is the most expeditious method of transporting First-Class Mail (section 101(e)). That is, if commercial passenger airplanes no longer were available for transporting First-

⁶ Douglas F. Carlson Notice of Filing of Amended Page of Complaint, filed September 24, 2001.

Class Mail, surface transportation might become the most expeditious method of transporting First-Class Mail, and the violation of section 101(e) might disappear. Similarly, if the only type of air transportation that was available was dedicated air transportation, which is more expensive than commercial passenger airline transportation,⁷ perhaps air transportation would no longer be economical. Thus, a violation of section 101(f) might disappear as a result of a changed landscape of air transportation in the United States.

Restrictions on the transportation of only one size or shape of First-Class Mail — e.g., small parcels and rolls (SPR's) — are relevant to this proceeding because First-Class Mail service standards apply to all sizes and shapes of First-Class Mail. A restriction in air transportation that applied to one size or shape might affect service standards for the entire class, thus also affecting resolution of issues related to sections 101(e) and 101(f).

The Postal Service controls all the information necessary for me to evaluate the continuing availability of commercial passenger airlines to transport First-Class Mail. I cannot be placed in a position of possibly submitting testimony or arguments on brief concerning sections 101(e) and 101(f) under the assumption that commercial passenger airlines continue to be available to transport all sizes and shapes of First-Class Mail, only to be surprised when the Postal Service reveals that commercial passenger airlines are, in fact, no longer available to transport First-Class Mail in the way in which they were available prior to September 11, 2001. This element of surprise is a real danger when my opponent controls this information. Therefore, it is critical that I establish in the record whether any permanent changes since September 11, 2001, have affected the availability of commercial passenger airlines to transport First-Class Mail. Requiring the Postal Service to answer an interrogatory to this effect will provide additional insurance against surprise because Rule 26(f) will impose

⁷ See Declaration of Charles M. Gannon at ¶ 12, filed July 30, 2001.

an ongoing obligation on the Postal Service to update the answer if circumstances changed.

My concern appears to be limited to documenting that no permanent changes in fact exist. In Docket No. R2001-1, the Postal Service responded to DFC/USPS-18 by providing exactly the information that I need to establish: no permanent changes exist.⁸ My concern is far from moot, however, as I need to place this statement on the record in Docket No. C2001-3 as well, where the risk of surprise exists.

For the reasons explained above, I move for reconsideration of POR C2001-3/4 to require the Postal Service to respond to DFC/USPS-GAN-31 as it pertains to *permanent* changes in the availability of air transportation on commercial passenger airlines. Alternatively, I move for leave to file a late interrogatory⁹ requesting confirmation of this information. Alternatively, I move to admit the response to DFC/USPS-18 into evidence pursuant to Rule 31(d). This interrogatory response is a public document, and the Commission should consider a Postal Service interrogatory response to be at least as reliable as one of the types of public documents listed as examples in Rule 31(d). (Rule 31(e) apparently is not available because DFC/USPS-18 has not yet been entered into evidence in Docket No. R2001-1, although it likely will be shortly.)

Respectfully submitted,

Dated: November 20, 2001

DOUGLAS F. CARLSON

⁸ Docket No. R2001-1, Response to DFC/USPS-18, filed November 13, 2001.

⁹ The deadline for filing discovery requests was October 29, 2001. POR C2001-3/1, filed October 10, 2001.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.

November 20, 2001
Berkeley, California

DOUGLAS F. CARLSON